

**Office of the Governor  
Patient's Compensation Fund Oversight Board  
(LAC 37:III Emergency Rule 3)**

Upon finding that imminent peril to the public health, safety or welfare required adoption of an emergency rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., adopted this Emergency Rule 3 at its meeting held on October 3, 2008.

On August 27, 2008, Governor Bobby Jindal issued Proclamation No. 51 BJ 2008 and declared the existence of a State of Emergency within the State of Louisiana caused by Hurricane Gustav. This State of Emergency extended from Wednesday, August 27, 2008 through Friday, September 26, 2008.

On September 7, 2008, Governor Bobby Jindal issued Proclamation No. 52 BJ 2008 and declared the existence of a State of Emergency within the State of Louisiana caused by Hurricane Ike. This State of Emergency extended from Saturday, September 6, 2008 through Sunday, October 5, 2008.

On September 9, 2008, Governor Bobby Jindal issued Proclamation No. 55 BJ 2008 and extended the previously declared existence of a State of Emergency within the State of Louisiana caused by Hurricane Gustav. This extension of the State of Emergency extends through Friday, October 10, 2008.

On August 30, 2008, Governor Bobby Jindal issued an Executive Order (unnumbered) and declared a State of Public Health Emergency within the State of Louisiana. This State of Emergency extended from August 30, 2008 through September 29, 2008.

On September 10, 2008, Louisiana Insurance Commissioner James J. Donelon acknowledged the foregoing and issued Emergency Rule 24 suspending certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting insureds in Louisiana caused by Hurricane Gustav.

Several million of Louisiana citizens, including many qualified health care providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF), have suffered damages due to Hurricane Gustav. The health care practices of many QHCPs and the homes of many patients were destroyed or were without power precluding the operation of practices, habitation and the delivery of mail. It is believed that this disruption has affected for some time, the ability of these QHCPs to timely pay their annual renewal PCF surcharges in full and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana. Hurricane Gustav has created a mass disruption to the normalcy previously enjoyed by QHCPs and patients and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens, both patients and QHCPs alike.

Accordingly, Emergency Rule 3 was adopted by the Oversight Board and shall only apply to certain QHCPs as set forth in this Emergency Rule.

In the ordinary course of business and pursuant to LAC 37:III §517, an insured QHCP is allowed a “grace” period of thirty (30) days in which to pay the annual renewal PCF surcharge in full to the insurer to extend the PCF coverage for another year. Pursuant to this same provision, a self-insured QHCP is required to pay the annual renewal PCF surcharge in full to the PCF prior to the expiration of the prior year’s PCF coverage. Hurricane Gustav and its aftermath have produced a disruption in the ability of many QHCPs in these affected areas to timely pay the annual renewal PCF surcharge in full to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. Emergency Rule 3 was adopted to provide emergency relief to the aforementioned QHCPs.

**Title 37**  
**INSURANCE**

**Part III. Patient's Compensation Fund Oversight Board**

**Chapter 1. General Provisions**

**§115. Qualified Health Care Provider Services**

**Emergency Rule 3**

A.1. Emergency Rule 3 shall only apply to QHCPs:

(i) who reside in, whose operation(s) and/or practice(s) are located in, or whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one or more of the following forty-seven (47) parishes or in one or more of any parish(es) identified by Louisiana Insurance Commissioner James J. Donelon in an amendment to Emergency Rule 27 or any subsequent emergency rule regarding insurance matters affecting certain insureds in Louisiana caused by Hurricane Gustav, as of August 30, 2008:

Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Catahoula, East Baton Rouge, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge and West Feliciana; and

(ii) who certify to the Oversight Board that said QHCP was impacted by Hurricane Gustav in a manner, including, but not limited to, evacuation, displacement, temporary relocation, or loss of power; and

(iii) whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 30, 2008 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule, QHCPs who meet all of the above criteria shall be referred to herein as “Affected QHCPs”. The provisions of this Emergency Rule 3 shall not apply to any health care provider not previously enrolled in the PCF prior to August 30, 2008.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for affected QHCPs during the effective periods set forth in this Emergency Rule. Except as provided for in paragraph A.5 of this §115, the cancellation of PCF qualification for affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until October 1, 2008.

a. PCF surcharges for all affected QHCPs (including self-insured QHCPs and those who are insured by an insurance company or by a trust fund), whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 30, 2008 but prior to October 1, 2008 (suspension period), shall be due and owing on October 1, 2008. Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an affected QHCP, then the renewal surcharge shall be remitted to the PCF consistent with the MMA and the Oversight Board's applicable rules.

5. A cancellation of PCF qualification shall not occur prior to October 1, 2008 unless upon the documented written request or written concurrence of the affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency Rule 3 shall be construed to exempt or excuse an affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.

7. Emergency Rule 3 shall not relieve an affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of Emergency Rule 3 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the affected QHCPs and the citizens of Louisiana.

9. Emergency Rule 3 became effective on August 30, 2008 and shall continue in full force and effect until October 1, 2008.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 32:

**§117. Termination; Survival**

A. Emergency Rule 3 shall terminate at 12 a.m. (midnight) on October 1, 2008. However, Paragraphs A.6 through A.8 of §115 shall survive the termination of Emergency Rule 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 32:

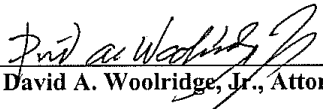
**§119. Severability Clause**

A. If any section or provision of Emergency Rule 3, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 3, as originally adopted and/or amended, to the affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to affected QHCPs or circumstances shall be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule 24 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Division of Administration, Patient's Compensation Fund Oversight Board, LR 32:

**Lorraine LeBlanc**  
**Executive Director**  
**Patient's Compensation Fund Oversight Board**

By:   
David A. Woolridge, Jr., Attorney